United Nations A/62/809

General Assembly

Distr.: General
21 April 2008

Original: English

Sixty-second session
Agenda item 139
Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Revised estimates arising in respect of Security Council resolution 1800 (2008) on the appointment of additional ad litem judges at the International Tribunal for the Former Yugoslavia

Report of the Secretary-General

Summary

By its resolution 1800 (2008), the Security Council decided that the Secretary-General may appoint, within existing resources, additional ad litem judges upon request of the President of the International Tribunal for the Former Yugoslavia in order to conduct additional trials, notwithstanding the fact that the total number of ad litem judges appointed to the Chambers will from time to time temporarily exceed the maximum of 12 provided for in article 12 (1) of the statute of the International Tribunal, to a maximum of 16 at any one time, returning to a maximum of 12 by 31 December 2008.

In the light of the foregoing decision, it is estimated that the requirements in connection with the appointment of up to four additional ad litem judges at any one time, returning to 12 by 31 December 2008, at the International Tribunal for the Former Yugoslavia for the biennium 2008-2009, would amount to $374,500. Every effort will be made to meet the costs arising from the appointment of the additional ad litem judges within the current appropriation for 2008-2009, and the actual expenditures will be reported in the context of the second performance report for 2008-2009.

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I. Introduction

1. In his letters of 31 December 2007 (S/2007/788), 22 January 2008 (S/2008/44) and 8 February 2008 (S/2008/99) to the President of the Security Council, the Secretary-General drew to the attention of members of the Council the proposal made by the President of the International Tribunal for the Former Yugoslavia that the Secretary-General be authorized to appoint additional ad litem judges upon request of the President of the International Tribunal, notwithstanding the fact that the number of ad litem judges will from time to time temporarily exceed the maximum of 12 provided for in article 12 (1) of the statute of the Tribunal, to a maximum of 16 at any one time, returning to a maximum of 12 by 31 December 2008, to enable the Tribunal to conduct additional trials once one or more of the permanent judges become available.

2. By its resolution 1800 (2008), the Security Council decided that the Secretary-General may appoint, within existing resources, additional ad litem judges upon request of the President of the International Tribunal, as requested in the aforementioned letters of the President of the Tribunal to the President of the Council.

3. Pursuant to that decision, it is anticipated that during the biennium 2008-2009, up to four additional ad litem judges at any one time, returning to 12 by 31 December 2008, will be appointed at the request of the President of the Tribunal. The increase in the number of ad litem judges will require additional resources in terms of compensation to judges, including salaries and allowances amounting to $374,500.

4. In that connection, it is noted that by its resolution 62/230, the General Assembly decided to appropriate to the Special Account for the International Tribunal for the Former Yugoslavia a total amount of $347,566,900 gross ($316,472,100 net) for the biennium 2008-2009.

II. Proposals for appointment of additional ad litem judges

5. Over the years, the Tribunal has been exploring ways to expedite the pace of trial activity. For the first time in the Tribunal's history, as from July 2007, the three Trial Chambers have been hearing seven cases simultaneously. That was made possible as a result of the decision taken to have judges sit in more than one trial and for judges to commence hearing an additional trial while engaged in the drafting of judgments. In order to maintain the high pace of trial activity, the President of the Tribunal requested authority from the Security Council for the appointment of additional ad litem judges over the statutory maximum of 12. Following the approval of the Council, that measure has enabled the Tribunal to start conducting a new eighth trial in February 2008.

6. Conducting eight trials concurrently would eventually lead to completion of a number of existing trials earlier than anticipated. It should be recalled that the proposed budget for the biennium 2008-2009 was prepared on the basis of a trial schedule that anticipated trial activity to decrease by the end of August 2009, with the reduction in the number of active first instance trials from seven to six cases and a further decrease to five trials by October 2009 (see A/62/374 and S/2007/663). As a result of the proposed temporary increase in ad litem judges, the Tribunal has

revised its trial schedule so as to assess the impact on first instance trial activity. Under the revised trial schedule, it is anticipated that trial activity will decrease from seven to six trials by the end of July 2009. In addition, while the initial trial schedule anticipated five active trials through the end of 2009, the revised trial schedule reflects the conduct of four trials in October and only three trials as of November 2009.

7. Completing first instance trial activity earlier will make it possible for appeals proceedings in the final cases to start earlier than anticipated and, by extension, shorten the completion date of all proceedings. It should be recalled in that regard that the assessment, as reported to the Security Council in December 2007, called for the completion of all appeals for existing cases by the end of 2011. Given the external factors that may affect the pace of trial activity (such as illness of the accused, replacement of defence counsel, requests for review of cases already tried, other motions affecting the proceedings and the availability of witnesses to certify statements and provide testimony) at the present stage it is not possible to determine how much earlier than originally planned all existing proceedings would be completed as a result of the start of an eighth trial in 2008.

8. No provision was made in the Tribunal's proposed budget for the biennium 2008-2009 for an eighth trial, as no information was available regarding courtroom availability at the time of preparation of the budget proposal in 2007. However, following the unanticipated developments in the *Haradinaj* case (where the Defence decided to waive its right to present a case), courtroom space has become available for the start of an eighth trial. Furthermore, it should be noted that the appointment of ad litem judges currently serving on other trials to additionally serve on new trials would not be an appropriate action, because either the judges' respective statutory terms of three years would expire before the expected completion of the trials, or those judges are already serving on two trials.

III. Resource requirements

9. In terms of level of resources appropriated under the Chambers for the biennium 2008-2009, it should be recalled that under the terms of article 12, Composition of the Chambers, of the statute of the Tribunal, the Chambers should be composed of a total of 28 judges, including 16 permanent judges and 12 ad litem judges. Bearing in mind that two of the appeals judges are budgeted under the International Criminal Tribunal for Rwanda, the level of resources for 2008-2009 for the Chambers was formulated and subsequently appropriated for the remaining 26 judges.

Composition of the Chambers

	Number of Judges					
		Additional ad litem judges in 2008 in accordance with Security Council resolution 1800 (2008)				
	Existing	*February to early March*	*Mid-March to June*	*July to September*	*October*	*Total*
Permanent judges[a]	16	—	—	—	—	16
Ad litem judges[b]	12	2	4	1	—	12
Total judges	**28**	**2**	**4**	**1**	—	**28**

[a] Includes two appeals judges budgeted under the International Criminal Tribunal for Rwanda.
[b] Includes three reserve judges in accordance with Security Council resolution 1660 (2006) and General Assembly decision 60/560 on the appointment of reserve judges at the International Tribunal for the Former Yugoslavia.

10. The temporary increase in the number of ad litem judges during 2008 will require additional resources to cover compensation of judges. The additional requirements, which amount to $374,500, have been calculated on the basis of the following parameters: a total of 14 ad litem judges (or 2 judges over the statutory maximum of 12) from February and early March 2008; during the period from March to June 2008, a total of 16 ad litem judges; the reduction of ad litem judges to 13 in July, August and September 2008; the anticipated reversion to the statutory maximum of 12 judges in October 2008. Those assumptions have been made on the basis of projected trial activity explained earlier.

11. While at this early stage in the biennium the Tribunal is not in a position to determine whether the additional costs can be met from within the approved appropriation, every effort will be made to absorb the additional requirements within the current appropriation for the biennium 2008-2009 and the final costs will be reported in the context of the second performance report for 2008-2009.

12. It should be noted, however, that given the level of current monthly expenditures (approximately $12 million per month), a reduction of only one month in the operations of the Tribunal would bring about a reduction in expenditures, which would more than offset the additional requirements associated with the temporary appointment of new ad litem judges. Furthermore, the early completion of first instance trials would also result in the early departure of those ad litem judges assigned to cases scheduled for completion in 2009, which would bring about savings under the budgetary provisions made in the biennium 2008-2009 for the honorariums of judges. Three ad litem judges were scheduled to depart in 2009 in accordance with the projected trial schedule used in the preparation of the budget for 2008-2009. A total of six ad litem judges would have completed their trials on the basis of the revised trial schedule, or three ad litem judges over and above the original estimate. That would translate into reduced requirements of $150,000 under salaries and allowance of judges for 2008-2009.

13. In conclusion, both the earlier departure of ad litem judges and earlier than anticipated completion of trials and appeals for all existing cases will, over the lifespan of the Tribunal, more than offset the financial implications associated with the temporary increase of ad litem judges proposed for the year 2008.

IV. Conclusion

14. In implementing the decision contained in Security Council resolution 1800 (2008), it is estimated that for the biennium 2008-2009 resources in the amount of $374,500 would be required for the appointment, at the request of the President of the International Tribunal for the Former Yugoslavia, of additional ad litem judges in order to conduct additional trials, notwithstanding the fact that the total number of ad litem judges appointed to the Chambers will from time to time temporarily exceed the maximum of 12 provided for in article 12 of the statute of the International Tribunal, to a maximum of 16 at any one time, returning to 12 by 31 December 2008. Every effort will be made to meet those costs within the current appropriation and the actual costs will be reported in the context of the second performance report for the biennium 2008-2009.

15. The General Assembly may wish to:

(a) Take note of the present report;

(b) Request the Secretary-General to submit a report on the implementation of Security Council resolution 1800 (2008) on the appointment of additional ad litem judges at the International Tribunal for the Former Yugoslavia in the context of the second performance report for the biennium 2008-2009.